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No. 92-1930

In The

Supreme Court of the United States

October Term, 1992

WILLIAM GRIFFIN,

Petitioner,

vs.

THE STATE OF NEW YORK,

Respondent.

Petition For Writ of Certiorari to the New York State Court of Appeals

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

STATEMENT OF THE CASE

On the night of January 18, 1987 the petitioner stabbed three of his fellow students in a University of Rochester dormitory, killing one of them. By all accounts the petitioner had been drinking heavily that evening since returning from a ski trip during the school's holiday break (the new semester was to begin the next day). At one point he was asked to leave a student's room because he became loud and obnoxious; however, just prior to his attack he appeared to be "out of it," slumped in the hallway with glassy eyes and a vacant stare. (The petitioner was known as a drinker by other students.) Gary Kramer and Heather Diemer were together in the dorm kitchen when the petitioner entered and stood in the doorway, holding a drink in his hand and mumbling. He did nothing for a few moments but then suddenly produced a switchblade knife in his other hand and began approaching the pair. He walked past Heather Diemer, telling her that he was not going to hurt her, and then lunged at Gary Kramer, stabbing him in the hand. He then "body

checked" Mr. Kramer against a window and stabbed him in the stomach and buttocks before backing off. Subsequently another student, Darrell Tornay, came into the kitchen and the petitioner stabbed him once in the stomach and then withdrew. Other students responded to the commotion and the petitioner stabbed another one, Rana Mattreja, in the side and at one point proclaimed that they were all going to die within minutes. When three officers from campus security arrived the petitioner became more hostile and aggressive. He initially tried to keep them out of the kitchen by closing the door and swinging his knife at them but they were eventually able to tackle and subdue him before police arrived.

Gary Kramer and Rana Mattreja recovered from their wounds but Darrell Tornay was not as fortunate. He had suffered a serious abdominal wound which required surgery. Although he initially appeared to be recovering he subsequently developed an infection and an abscess which necessitated further surgery. However, immediately after this operation he developed difficulty breathing due to fluid accumulating in his lungs, apparently as a result of an allergic reaction of some sort during the operation. Despite

intensive medical efforts his condition rapidly worsened until his heart failed. He died on February 19, a month and a day from the time he was stabbed.

The petitioner claimed that he had no recall of the incident and that he did not remember anything from the time he was in a friend's room earlier that evening until he woke up later in the hospital. Although he tried to minimize the amount of his drinking that evening he admitted that he liked to drink and "get rowdy" and that he had gotten drunk a number of times previously. He also admitted that he was under a great deal of pressure at school and that he had told a doctor at the hospital following the incident that his outburst, which he characterized as a "prank that got out of hand," was caused by the pressure and not the alcohol. He also indicated that he had bought the switchblade from his roommate as a "novelty" and that he occasionally played with it.

It was the defense position that the petitioner was (temporarily) insane and not criminally responsible for his actions due to a rare condition known as pathological (or idiosyncratic) intoxication, which is an uncharacteristic response to alcohol ingestion. A doctor

testified to this on his behalf. The defense also presented a number of character witnesses who testified to the petitioner's reputation as a nonviolent person, although none had apparently ever heard of his drinking. The petitioner also contended that he was not legally responsible for the victim's death, claiming that death was instead due to negligent medical treatment.

The People presented expert rebuttal evidence indicating that the petitioner had ingested much more alcohol prior to the incident than he himself admitted and that he had not suffered from pathological intoxication (which generally involves minimal amounts of alcohol intake) but rather simple intoxication (as also concluded by the hospital which treated the petitioner following the incident).

After hearing the evidence the jury rejected the proffered defenses and held the petitioner accountable for his conduct, convicting him (as charged) of depraved mind murder, assault and possession of a weapon. On appeal both the New York Supreme Court, Appellate Division and the New York Court of Appeals unanimously affirmed (*People v Griffin*, 173 AD2d 120, 578 NYS2d 782 [NY App Div 1991], *affd* 80 NY2d 723, 594 NYS2d 694, 610

NE2d 367 [NY 1992]). Both courts concluded that because the petitioner was clearly responsible for the victim's death under the well-established law of causation then the exclusion of the testimony of one of the petitioner's expert medical witnesses was not prejudicial error.

SUMMARY OF ARGUMENT

While the petitioner now seeks review by this Court on the specific basis that he was denied his right to due process under the Fifth and Fourteenth Amendments of the United States constitution by the exclusion of certain defense evidence he never so presented this claim in the state courts. Instead, he phrased his argument only in general terms of his right to a "fair trial", and we respectfully submit that this was insufficient. In addition, the petitioner's additional argument to this Court that the New York "rule" on cause of death is violative of federal due process was never fairly presented *at all* in the state courts and consequently not passed upon there. It should thus not be considered by this Court.

Alternatively, even on a substantive basis there is no warrant for review by this Court. The claim involving the exclusion of defense evidence involved only state procedural and evidentiary rulings which in the context of the case caused no undue prejudice to the petitioner, particularly since not all of his expert evidence was excluded. Furthermore, the claim regarding New York's legal standard for cause of death is misstated by the petitioner. "Medical malpractice" may indeed under certain circumstances be a "supervening" cause of death relieving a defendant of criminal liability therefor, and New York's rule is entirely consistent with its sister states in this regard, contrary to the petitioner's suggestion.

ARGUMENT

POINT I

The petitioner's present claims were not fairly presented in the state courts.

While the petitioner now contends that the exclusion of certain expert defense evidence denied him due process under the Fifth and Fourteenth Amendments of the United States Constitution he did not raise this specific argument in the state courts. Indeed, he acknowledges that his arguments there were phrased solely in

terms of his right to a "fair trial" (Petition, pp 7-8). No specific constitutional or statutory provision, state or federal, was ever cited by the petitioner, and none was ever referenced by the state courts in deciding the issue. We respectfully submit that the petitioner thus failed to properly present his current claim in the state courts, *particularly* since the New York Constitution contains its own due process clause, which is identical to its federal counterpart (NY Const, art I, §6). Thus, while the concept of a fair trial is a facet of due process, the state court determinations may have been based on notions of *state* due process (*see*, *Bankers Life & Casualty Co. v Crenshaw*, 486 US 71, 76-77 [1988]; *see also*, *Taylor v Freeland & Kronz*, __US__, __, 112 S Ct 1644, 1649 [1992]; *Yee v City of Escondido, Cal.*, __US__, __, 112 S Ct 1522, 1531 [1992]); *Taylor v Illinois*, 484 US 400, 407 n9 [1988]; *Board of Directors of Rotary International v Rotary Club of Duarte*, 481 US 537, 550 [1987]).

In addition, the petitioner's second claim now presented for review in this Court, that New York's cause of death "rule" as it relates to medical malpractice is itself violative of federal due process, was never presented *at all* in the state courts. While the

petitioner on appeal addressed the continuing vitality of the traditional New York rule he did so only in terms of offering, e.g., moral and policy grounds for why the legal standard should be reconsidered, and he also suggested that the Court of Appeals had indeed recently revised the rule by case law (Appellant's Brief [Appellate Division], pp 43-46; Appellant's Brief [Court of Appeals], pp 48-52). The petitioner never raised the argument he now makes to this Court (including his specific reliance on the "privileges and immunities" clause of the Fourteenth Amendment [Petition, p 6]), and it appears that such has only been constructed in a last-ditch effort to attract this Court's attention so that he can get his *other* (and primary) claim reviewed. This is unfair to the respondent (as well as to the state courts) and this Court should decline review.

POINT II

On a substantive basis the petitioner's claims are meritless and do not warrant review by this Court.

On a substantive basis the petitioner's claims are meritless; indeed they are not even accurately stated. While the petitioner now poses his first question to this Court as whether he was denied due

process when the People were "allowed" to present at trial expert medical evidence as to cause of death but he was not, the fact of the matter is that the People's expert (the treating physician) merely testified that the second operation was "related" to the original stab wound through an infection caused by the stab wound. "Related" is a rather general term and of course does not have significance as merely a legal standard. Indeed, from a medical standpoint (and as a practical matter) there was no dispute that the infection which necessitated the subsequent surgery was "related" to the stabbing (and the petitioner has never suggested otherwise). (It should also be noted that the doctor's testimony that the victim died from "complications of treatment of an infection from a stab wound" was elicited by *defense counsel on cross-examination*). Furthermore, while the People's pathologist (who performed the autopsy) testified that the stab wound was "the original thing that started the process" and that death was "related directly" to the stab wound such testimony was received *without objection by the petitioner*. In any event, there would seem to be a medical standard inherent in this testimony as well, and to the extent it may have "intruded" into the

legal (i.e., the jury's) arena it did so with the acquiescence of the petitioner. Moreover, there is no legal or logical support for the argument that because of such the petitioner was then entitled to have his expert (a pathologist), over objection of the prosecutor, offer an opinion which blatantly addressed the ultimate "legal" question to be resolved by the jury by indicating that there was "flagrant medical malpractice" constituting an "independent, supervening cause of death". Indeed, the petitioner's *other* expert (a surgeon) was properly precluded from testifying as to whether the stab wound was the "sufficiently direct cause of death" and whether death was "a result of the stab wound or... a result of improper medical and surgical care". That defense counsel may have misapprehended the law and not objected to the testimony of the People's witnesses on the notion that his own witnesses would be allowed to present similar testimony is hardly a compelling reason to conclude that the petitioner was denied a fair trial.

Significantly, the petitioner was ultimately able to present expert medical testimony through his surgeon, who testified in detail as to various aspects of the medical care which were deficient in his

opinion. Indeed, it was readily apparent that this doctor firmly believed that had what he felt was appropriate care been rendered the victim would never have died. However, as the state courts all agreed, under the applicable legal standard for causation the petitioner was clearly responsible for the victim's death. There was no dispute (i.e., among the experts, including those for the defense) that the victim died during an operation that was performed to treat an abdominal abscess caused by an infection. There was also no question that the infection was caused by the stab wound, either directly or through the initial surgery which it necessitated. Finally, the initial surgery was necessitated by the stab wound, which if untreated would unquestionably have been fatal. As such the petitioner's conduct in stabbing the victim and making medical intervention necessary made him criminally accountable for the victim's death. In light of this then, any exclusion of *additional* defense evidence regarding the quality of the medical care simply could not have prejudiced the petitioner. Thus, principles of state procedural and evidentiary law mandated affirmance of the petitioner's conviction, and there is no occasion for this Court to review such.

Finally, the petitioner's second question presented to this Court, whether the New York "rule" that medical malpractice must be the "sole" cause of death and that it is not sufficient that it was a "supervening" cause violates due process, simply misstates the rule. It is clear that under the New York law on causation improper medical treatment *may*, in certain instances, be a supervening (or "superseding") cause of death which breaks the chain of causation attributable to a defendant (*see, e.g.*, *People v Eulo*, 63 NY2d 341, 359, 482 NYS2d 436, 447, 472 NE2d 286, 297 [NY 1984]; *People v Stewart*, 40 NY2d 692, 389 NYS2d 804, 358 NE2d 487 [NY 1976]). Thus, if improper medical care is determined to be a superseding cause of death it is also by definition the "sole" cause of death from a legal standpoint, and vice versa. The two concepts are not independent or exclusive of one another, as the petitioner contends.

Furthermore, the requirement that improper medical treatment be the sole cause of death is not, as the petitioner asserts, at odds with the rule in other states. In fact, of all of the cases cited by the petitioner for this proposition (Petition, pp 8-9), only the

Colorado cases do *not* express the rule in terms of a sole cause standard just like New York, and even the Colorado cases do not expressly disavow a sole cause standard. Indeed, what may well be involved in this regard is simply a matter of semantics, since the focus is always on the nature and gravity of any improper medical treatment, and as previously noted New York, like its sister states, fully recognizes that in certain instances improper medical treatment may relieve a defendant of liability for the victim's death. Thus there is no "defect" or "conflict" in the New York rule, and in this case it was not the rule which betrayed the petitioner but simply the failure of his proof.

CONCLUSION

In sum, on both procedural and substantive grounds there is no basis for this Court to review the determination of the New York Court of Appeals in this matter, and we respectfully request the Court to deny the petition for a writ of certiorari.

Respectfully submitted,

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